

**FILED**

**December 12, 2003**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

Starcher, C. J., concurring:

I.

I concur in the Court's judgment and opinion. I write separately to state my belief, echoing Justice Maynard's separate opinion, that the Court's action in this case is distinguishable from the result in *In re Smith*, 214 W.Va. 83, 585 S.E.2d 602 (1980) only by the fact that a slim majority of the *Smith* Court believed that serious malfeasance and corruption did not have the same weight as do the members of this Court who decided the instant case. In other words, I believe that the Court that decided the instant case would have reached a different result in the *Smith* case.

In my opinion, the Court that decided the instant case would have followed the recommendation of the State Bar committee in *Smith* that recommended non-reinstatement, and would have taken the position of the *Smith* minority opinion, authored by former Justice Miller. Thus I agree with Justice Maynard that while the Court's *per curiam* opinion in the instant case does not explicitly overrule *In re Smith*, it does so *sub silentio*.

II.

I also wish to state my perspective on the issue raised in Justice Davis' separate opinion regarding the reinstatement of former Judge John Hey's law license. I realize that

reasonable minds may differ on these issues, and I respect the sincerity and force of the view that Justice Davis takes.

However, to my view, while there may be some similarities, there are also many clear differences between the *Moore* and *Hey* cases.

Both men abused positions of public trust, both engaged in reprehensible conduct (but conduct of a totally different nature); in both cases, public confidence in government suffered injury.

The differences, as I see them, are as follows: Judge Hey's misconduct was directly tied to and came from a sickness, his alcoholism. Governor Moore's was not. Judge Hey admitted to committing two battery *misdemeanors* against private individuals, crimes that did not involve theft or dishonesty; Governor Moore committed *felonies* that involved dishonesty, pleading guilty to mail fraud, filing false tax returns, extortion, and obstruction of justice. Judge Hey has spent many years in counseling and treatment for the problems that led to his misconduct, and continues to do so to this day; Governor Moore has done nothing of the sort. Judge Hey pled guilty and made several statements of apology regarding those whom he offended and he performed in excess of 600 hours of volunteer service at a women's shelter. Judge Hey was also assessed \$20,000.00 as a penalty for his misconduct – a penalty that this writer believes is the only instance of this ever occurring. Governor Moore has refused to acknowledge any wrongdoing, and has disavowed his guilty pleas.

In sum, there are substantial differences in the two cases.

### III.

Perhaps most importantly, the Hearing Panel that heard Judge Hey's petition for reinstatement (a panel that included a female attorney), issued a lengthy and reasoned opinion recommending reinstatement, subject to serious conditions including continuing treatment. The panel that heard Governor Moore's petition recommended that he not have his privilege to practice law restored. In *Committee on Legal Ethics v. McCorkle*, 192 W.Va. 286, 452 S.E.2d 377 (1994), this Court stated that we should give substantial deference to the recommendations of Hearing Panels. We should have shown that deference in the *Bernard Smith* case; we did in the *John Hey* and *Arch A. Moore, Jr.* cases.

### IV.

For the foregoing reasons, I concur in the Court's opinion.